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In the

Supreme Court of the United States

October Term 1941

No. 1159

THE STATE OF WYOMING,
Petitioner,
vs.
YELLOWSTONE PARK COMPANY,
a corporation,
Respondent,

PETITION FOR WRIT OF CERTIORARI

BRIEF ACCOMPANYING PETITION

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LABOR JOURNAL, CHEYENNE

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THE STATE OF WYOMING, *Petitioner,*
vs.
YELLOWSTONE PARK COMPANY, a corporation, *Respondent.*

PETITION FOR WRIT OF CERTIORARI

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of the State of Wyoming, the above-named petitioner, respectfully shows:

I.

That on the 12th day of October, 1940, petitioner, The State of Wyoming, filed in the District Court of the First Judicial District within and for the County of Laramie, State of Wyoming, its petition (R. P. 4) against respondent, Yellowstone Park Company, a corporation; said petition prayed that judgment be entered therein in favor of said petitioner and against said respondent in the sum of $21,817.32.

II.

In said action petitioner alleged, in substance, that the said respondent had imported or caused to be imported certain quantities of gasoline into a certain area known as Yellowstone National Park, located within the confines of the State of Wyoming, and used and consumed the same therein, in the operation of its motor vehicles; that said respondent had failed and refused to pay to the petitioner the tax upon said gasoline legally levied under and by virtue of the laws of the State of Wyoming; that said tax, as computed and assessed under the Wyoming laws, amounted to the said sum of $21,817.32.

III.

That said cause proceeded to trial on the 24th day of March, 1941, upon an agreed statement of facts between the parties (R. P. 6), at the conclusion of which, judgment was rendered in favor of the said respondent and against said petitioner (R. P. 8).

IV.

In due time the said petitioner appealed the case to the Supreme Court of the State of Wyoming, the said being the highest Court in Wyoming wherein a decision could be had, and on the 20th day of January, 1942, the Supreme Court of the State of Wyoming rendered its decision (R. P. 12), wherein it affirmed the decision of the District Court of the First Judicial District within and for the County of Laramie, Wyoming.

JURISDICTIONAL STATEMENT

I.

Section 10 of the Hayden-Cartwright Act of June 16, 1936 (Public No. 686—74th Congress), amending the Federal Aid Highway Act (Act of July 11, 1916, 30 Stat. 335), (Title IV, U.S.C.A. Section 12), as amended, is as follows:

> "(a) All taxes levied by any State, Territory or the District of Columbia upon sales of gasoline and other motor vehicle fuels may be levied, in the same manner and to the same extent, upon such fuels when sold by or through post exchanges, ship stores, ship service stores, commissaries, filling stations, licensed traders, and other similar agencies, located on United States military or other reservations, when such fuels are not for the exclusive use of the United States. Such taxes, so levied, shall be paid to the proper taxing authorities of the State, Territory or the District of Columbia, within whose borders the reservation affected may be located.
>
> "(b) The officer in charge of such reservation shall, on or before the fifteenth day of each month, submit a written statement to the proper taxing authorities of the State, Territory or the District of Columbia within whose borders the reservation is located, showing the amount of such motor fuel not sold for the exclusive use of the United States during the preceding month."

II.

Session Laws of Wyoming, 1935, Chapter 72, Section 2, is as follows:

> "Section 115-1102, Wyoming Revised Statutes, 1931, as amended by Section 2 of Chapter 60, Session Laws of Wyoming, 1933, Special Session, is hereby amended and re-enacted to read as follows:

"Section 115-1102. A license tax of four cents per gallon is hereby levied on all gasoline produced, refined, manufactured, blended or compounded, and used within this State, and on all gasoline produced, refined, manufactured, blended or compounded, and sold or distributed for sale or use within this State or imported into this State, for sale or use therein, to be collected as hereinafter set forth."

III.

The Supreme Court of the State of Wyoming, by its decision of January 20, 1942, has decided a Federal question of substance, and said question had not theretofore been determined by this Court.

IV.

That the decision of the Supreme Court of the State of Wyoming made and rendered on the 20th day of January, 1942, is in conflict with the opinion and decision of the United States Circuit Court of Appeals made and rendered on the 30th day of March, 1942, in Cause No. 11966 then pending in said Court and entitled "State of Minnesota, Appellant, vs. Colonel H. J. Keeley, Individually and as Commanding Officer of the Fort Snelling Post Exchange of the Fort Snelling Military Reservation and the Fort Snelling Post Exchange, Appellees." (Not officially reported at this time.)

V.

That the decisions of the Supreme Court of the State of Wyoming and of the United States Circuit Court of Appeals, Eighth Circuit, each involved the construction of the Hayden-Cartwright Act of June 16, 1936, (Title IV, U.S.C.A. Section 12).

STATEMENT OF FACTS

I.

That Congress in the year 1936, by its enactment of the Hayden-Cartwright Act (Title IV, U.S.C.A. Section 12), ceded to the several states the right to levy a tax on gasoline within Federal areas located within the several states, in the same manner and to the same extent as such taxes could be levied under the laws of the particular state, within whose boundaries said Federal area is located.

CONTENTION OF PETITIONER

It is the contention of petitioner that from and after the effective date of the Hayden-Cartwright Act (Title IV, U.S.C.A. Section 12), the gasoline tax laws of the State of Wyoming extended to Federal areas located within said state. That Congress by its enactment of this legislation sought to, and did, remove the bar which then existed in the State of Wyoming and the other sovereign states against the extension of the gasoline tax laws of said states into Federal areas.

REASONS WHY WRIT OF CERTIORARI SHOULD BE GRANTED

Your petitioner prays that a Writ of Certiorari, to review the decision of the Supreme Court of the State of Wyoming made and entered on the 20th day of January, 1942 (R. P. 12), should be granted for the following reasons:

I.

Because the Supreme Court of the State of Wyoming, by its decision of January 20, 1942 (R. P. 12), has decided a Federal question of substance not theretofore determined by this Court.

II.

Because the Supreme Court of the State of Wyoming, by its decision of January 20, 1942 (R. P. 12), refused to recognize and apply the provisions of the Hayden-Cartwright Act of 1936, thereby depriving the State of Wyoming of substantial revenue through an erroneous interpretation and construction of a Federal statute.

III.

Because the decision of the Supreme Court of the State of Wyoming conflicts with the decision of the United States Circuit Court of Appeals, Eighth Circuit, in Cause No. 11966, decided by said Court on the 30th day of March, 1942.

IV.

Because to permit the decision of the Supreme Court of the State of Wyoming to stand, would tend to create a condition of confusion between the several states and the United States in the interpretation and enforcement of the provisions of the Hayden-Cartwright Act of 1936.

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Court, directed to the Supreme Court of the State of Wyoming, commanding the said Court to certify and send to this Court on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the Supreme Court of the State of Wyoming in the case therein entitled:

"No. 2214
"The State of Wyoming,
Plaintiff and Appellant,
vs.
"Yellowstone Park Company,
a Corporation,
Defendant and Respondent."

to the end that said case may be reviewed and determined by this Court, as provided by the Judicial Code, Sections 237 (b)—240 (a) as amended by the Act of February 13, 1925, providing for review on Writ of Certiorari of decisions of State courts; and that your petitioner may have such other and further relief or remedy in the premises as to this Court may seem appropriate, and in conformity to said Act; and that the judgment of the Supreme Court of the State of Wyoming in said case and every part thereof may be reversed by this Honorable Court, and your petitioner will ever pray.

THE STATE OF WYOMING,
By

EWING T. KERR
Attorney General

HAROLD I. BACHELLER
Deputy Attorney General

ARTHUR KLINE
Assistant Attorney General

ATTORNEYS FOR PETITIONER.

THE STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

I, Ewing T. Kerr, do hereby certify that I have carefully examined the foregoing petition for a Writ of Certiorari and the allegations thereof are true, as I verily believe, and in my opinion the petition is well founded and the case is one in which the prayer of the petition should be granted by this Court.

EWING T. KERR
Counsel for Petitioners.

Subscribed and sworn to before me this 17th day of April, 1942.

Ruby B. Salyer
Notary Public.

My commission expires March 25, 1943.

In the Supreme Court of the United States

October Term 1941

No. .....

THE STATE OF WYOMING,)
Petitioner,)
vs.)
YELLOWSTONE PARK COMPANY,)
a corporation,)
Respondent.)

BRIEF IN SUPPORT OF PETITION

QUESTION INVOLVED

This cause was originally tried in the State Court upon an agreed statement of facts (R. P. 6), and it will be noted no controversy exists between the parties as to the fact of the importation and use within the Yellowstone National Park of certain quantities of gasoline; that the tax levied by the State of Wyoming has not been paid thereon. Paragraph V of the agreed statement of facts sets out verbatim the Hayden-Cartwright Act of June 16, 1936, and inasmuch as this Act has been referred to on several occasion in our petition for the Writ of Certiorari, of which this brief is a part, it will not be necessary to again quote that statute.

Paragraph VI of the agreed statement of facts, with particular reference to said Hayden-Cartwright Act, contains the following language:

> "That the question for determination by the Court is whether or not the provisions above quoted subjects

the defendant to the State tax of four cents (4c) per gallon on the gasoline used by the defendant in its trucks and busses within the confines of Yellowstone National Park."

STATEMENT OF FACTS

This suit, as filed, had for its purpose the recovery of the statutory tax of four cents per gallon upon all gasoline imported by the respondent into Yellowstone National Park and used and consumed therein by said respondent in propelling and operating its motor vehicles.

SPECIFICATIONS OF ERROR

The petitioner relies upon the following specifications of error:

I.

The Supreme Court of the State of Wyoming erred in holding and deciding, on January 20, 1942, that Section 10 of the Hayden-Cartwright Act of 1936 (Title IV, U.S.C.A. Section 12), applied only to sales of gasoline within Yellowstone National Park and not to the use thereof within said area.

II.

That the opinion and decision of the Supreme Court of the State of Wyoming of January 20, 1942, has resulted in the suspension of the operation and enforcement of a Federal statute, namely, Section 10, Hayden-Cartwright Act of June 16, 1936, with respect to the use of gasoline in Yellowstone Park, and by reason thereof has caused and will continue to cause, until reversed by this Honorable Court, substantial loss of revenue to the State of Wyoming.

III.

That the opinion and decision of the Supreme Court of the State of Wyoming of January 20, 1942, is in conflict with the decision and opinion of the United States Circuit Court of Appeals, Eighth Circuit, made and rendered on the 30th day of March, 1942.

IV.

That the decision of the Supreme Court of the State of Wyoming is contrary to the law.

V.

That the decision of the Supreme Court of the State of Wyoming is contrary to the evidence.

ARGUMENT

The Supreme Court of the State of Wyoming, under the agreed facts in the case, had before it for determination only one question, the answer to which depended upon the proper construction and interpretation of a Federal statute. In the reported decision of the Wyoming case (121 Pac. 2nd, 170), the Court made the following statement:

> "The question involved in this case is as to whether or not an act of Congress permitting the State to levy a gasoline tax on sales of gasoline in Yellowstone Park includes permission to levy a tax on the use thereof by the importer."

No contention was made in the case that any state had received or been paid the tax on the gasoline in question, and we, therefore, must accept it as a fact that, so far, the gasoline upon which the tax was sought has completely escaped taxation. In fact, we believe it is perfectly proper

to state to this Court that upon the argument before the Supreme Court of the State of Wyoming it was conceded by the respondent that no tax had been paid to any state on said gasoline. In the reported case (State vs. Yellowstone Park, supra) the Court said:

> "The company imported certain gasoline and sold it. It paid a tax upon the goods so sold, and to that extent no controversy between the parties exists."

Admittedly, if the gasoline in question had been purchased within the Park boundaries, even under respondent's contention, the Wyoming tax would have been paid. No sufficient reason appears therefor to exempt this same gasoline purchased tax free outside of the park, imported therein, and used by respondent. It would seem that this method results in placing the imported gasoline in a favored position or status with respect to the tax, as compared with gasoline which this respondent and others might purchase and use within the Park boundaries.

We do not believe that Congress, in passing the Hayden-Cartwright Act, desired or intended this result, and as absolute evidence of this fact, we call attention to certain legislation which was passed by Congress on October 9, 1940, 54 Stat. 1060, 4 U.S.C.A. 12. This legislation removed any doubt which might have existed theretofore, as to the meaning of the Hayden-Cartwright Act by striking out the phrase appearing in said Act,

> "upon sales of gasoline and other motor vehicle fuels,"

and inserting in lieu thereof the following:

> "upon, with respect to, or measured by, sales, purchases, storage or use of gasoline or other motor vehicle fuels."

There was also a further amendment which eliminated the phrase,

"upon such fuels,"

and inserted in lieu thereof the phrase,

"with respect to such fuels."

If Congress had originally intended to permit the tax to be imposed upon "sales" only, then it would have been very reluctant,—and some compelling reason must have existed to induce it,—to amend the Act to include a tax upon "use".

The Buck Act above referred to was only a portion of certain highway legislation contained in the same bill. The Senate Committee report contains, among other things, the following statement with reference to that portion of the bill amending the Hayden-Cartwright Act as above set out:

> "* * * it contains certain *clarifying* amendments to section 10 of the Federal Highway Act of June 16, 1936, (known as the Hayden-Cartwright Act permitting taxation of sales of gasoline and other motor vehicle fuel sold in Federal areas for private purposes) * * *." (Underscoring supplied.)

Prior to the submission of the original cause to the Supreme Court of the State of Wyoming, a case based upon similar facts and involving an interpretation of the Hayden-Cartwright Act had been decided by the United States District Court of the state of Minnesota, and in that case the Minnesota court held that the Hayden-Cartwright Act applied only to "sales" of gasoline, and did not permit, according to the Minnesota court, the imposition of "use" or "privilege" taxes within Federal area. (State of Minnesota vs. Ristine, 36 Fed. Sup. 3).

The Wyoming Supreme Court, in its decision of January 20, 1942, quotes with approval, and in fact we believe largely bases its decision upon, the Minnesota case, supra. That case had then been appealed to the United States Circuit Court of Appeals for the Eighth Circuit and was then under advisement by that court.

We have called attention to the amendment to the Hayden-Cartwright Act passed by Congress on October 9, 1940, and it will be observed that the Wyoming Supreme Court construes the passage of that amendment as an admission by Congress that it was intended to effect a change in the then existing statute, and on page 171 of the Wyoming Supreme Court's decision (121 Pac. 2nd, 170) we find the following language:

> "Attention in the Minnesota case, supra, was doubtless called to this change in the law on account of the general rule 59 C. J. 1097, that 'it will be presumed that the legislature, in adopting the amendment, intended to make some change in the existing law, and therefore the courts will endeavor to give some effect to the amendment. So a change of phraseology from that of the original act will raise the presumption that a change of meaning was also intended.' "

In this connection the Minnesota case (Federal District Court decision) likewise views the amendment as effecting a change in the law rather than merely for the purpose of clarification.

On March 30, 1942, the United States Circuit Court of Appeals for the Eighth Circuit rendered its opinion and decision, reversing the lower court, and holding, in effect, that the Hayden-Cartwright Act was broad enough to embrace all of the various kinds of state gasoline taxes, including "use" tax. (State of Minnesota vs. Colonel H. J.

Keeley et al., decided March 30, 1942, Cause No. 11966, United States Circuit Court of Appeals, Eighth Circuit.) It will be noted that there was a substitution of parties defendant in the Circuit Court of Appeals.

It has always been contended by the State of Wyoming that Congress did not use the word "sales" in the Hayden-Cartwright Act in a technical or narrow sense. The purpose of this legislation was to permit an imposition of a State gasoline tax within Federal areas not theretofore subject to the tax. Our position is well illustrated by the language used in the decision of the Circuit Court of Appeals, supra. This case not having been officially reported, we are compelled to resort to the typewritten manuscript of the opinion which we have before us. We quote from said opinion as follows:

> "• • • The defendants moved to dismiss the action, in effect upon the ground that the Minnesota gasoline tax was not such a form of tax as was within the language or purview of the Hayden-Cartwright Act, and that the State therefore was not entitled to any relief. The trial court sustained the motion, and, in a written opinion, 36 F. Supp. 3, 6, declared: 'It is my opinion that the United States consented to the imposition and collection of "sales" taxes on motor fuels, and to such taxes only. It did not consent to the imposition of "use" or "privilege" taxes.'
>
> "From the purpose and history of the statute, we do not believe that Congress intended that its language should be given such a rigid and narrow interpretation. The general purpose of the Hayden-Cartwright Act clearly was to further and extend the program of highway improvement which had been initiated by the Federal Aid Highway Act of 1916, through the matching of federal and state funds. • • •"

Again, further on in its opinion, the Circuit Court of Appeals discussed the effect of the passage of the Buck Resolution, and we again quote from the decision of the Circuit Court of Appeals:

> "* * * All of this seems to us only to confirm that the original intention of Congress, in enacting section 10 of the Hayden-Cartwright Act, was as we have indicated it above to have been, and that the purpose of section 7 of the Buck Act was simply to make such 'clarifying amendments' as could leave no room for further possible misconstruction and as would require an immediate and full effectuation of congressional purpose. In this situation, we can see no sound reason for holding that there is any such narrow absoluteness in the language 'all taxes * * * upon sales of gasoline' as to require a judicial denial of the right of the State of Minnesota to the benefit of taxes which have been collected by the Post Exchange pursuant to the laws of that State, and which are now being held until their proper disposition has been the subject of legal determination. * * *"

CONCLUSION

We do not wish to extend this argument further, as we are clearly of the opinion that a study of the record will leave no room for doubt that the petitioner herein is, at least, entitled to the issuance of a Writ of Certiorari to review the decision of the Wyoming Supreme Court.

We submit that the Supreme Court of the State of Wyoming has decided a Federal question of substance not theretofore determined by this Court, and that said decision is in direct conflict with the decision of the United States Circuit Court of Appeals, Eighth Circuit, made and rendered on the 30th day of March, 1942, in the case of State of Minnesota vs. Colonel H. J. Keeley et al. It therefore

clearly appears that the State of Wyoming is entitled to have a review of this decision by this Court, and we respectfully request the issuance of such Writ.

Respectfully submitted,

EWING T. KERR
Attorney General

HAROLD I. BACHELLER
Deputy Attorney General

ARTHUR KLINE
Assistant Attorney General

Attorneys for Petitioner.

APPENDIX

The following are those portions of the Federal and State statutes which have a material bearing upon the questions under discussion:

HAYDEN-CARTWRIGHT ACT OF 1936
(4 U.S.C.A. Sec. 12.)

"(a) All taxes levied by any State, Territory or the District of Columbia upon sales of gasoline and other motor vehicle fuels may be levied, in the same manner and to the same extent, upon such fuels when sold by or through post exchanges, ship stores, ship service stores, commissaries, filling stations, licensed traders, and other similar agencies, located on United States military or other reservations, when such fuels are not for the exclusive use of the United States. Such taxes, so levied, shall be paid to the proper taxing authorities of the State, Territory or the District of Columbia, within whose borders the reservation affected may be located.

"(b) The officer in charge of such reservation shall, on or before the fifteenth day of each month, submit a written statement to the proper taxing authorities of the State, Territory or the District of Columbia within whose borders the reservation is located, showing the amount of such motor fuel not sold for the exclusive use of the United States during the preceding month."

AMENDMENT TO HAYDEN-CARTWRIGHT ACT ADOPTED OCTOBER 9, 1940, 54 St. at Large, 1059.

"* * * "All taxes levied by any State, Territory or the District of Columbia upon, with respect to, or measured by, sales, purchases, storage, or use of gasoline or other motor vehicle fuels may be levied, in the same manner and to the same extent, with respect to such fuels when sold by or through post exchanges,

ship stores, ship service stores, commissaries, filling stations, licensed traders, and other similar agencies, located on United States military or other reservations, when such fuels are not for the exclusive use of the United States. Such taxes, so levied, shall be paid to the proper taxing authorities of the State, Territory or the District of Columbia, within whose borders the reservation affected may be located."

SESSION LAWS OF WYOMING, 1935, CHAPTER 72, SECTION 2.

"Section 115-1102, Wyoming Revised Statutes, 1931, as amended by Section 2 of Chapter 60, Session Laws of Wyoming, 1933, Special Session, is hereby amended and re-enacted to read as follows:

"Section 115-1102. A license tax of four cents per gallon is hereby levied on all gasoline produced, refined, manufactured, blended or compounded, and used within this State, and on all gasoline produced, refined, manufactured, blended or compounded, and sold or distributed for sale or use within this State, imported into this State, for sale or use therein, to be collected as hereinafter set forth."

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vs.
YELLOWSTONE PARK COMPANY, a corporation, *Respondent,*

BRIEF FOR RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

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BRIEF FOR RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

Question Presented Would Seem to be Unsubstantial.

The Hayden-Cartwright Act of June 16, 1936, (49 Stat. 1521) upon which the petition here is based, has been amended by the Buck Act of October 9, 1940, (54 Stat. 1060) in such respects that, so far as the future administration of the law is concerned, the petition presents only a moot question.

The relevant part of the Hayden-Cartwright Act is quoted at top of page 18 of the petition here, and the relevant part of the Buck Act is quoted at the foot of the same page.

Petitioner's specifications of error I and II (page 10 of Petitioner's brief) insofar as administration of the Federal Act in future is concerned, are, of course, groundless.

No actual conflict between the decisions of the State Court and the United States Circuit Court of Appeals as suggested, specification of Error III.

By Specification of Error III (Brief, p. 11) petitioner claims that the decision of the Supreme Court of Wyoming, in the case State of Wyoming vs. Yellowstone Park Company, 121 Pac. (2d) 170, is in conflict with the decision of the United States Circuit Court of Appeals, Eighth Circuit, in the case State of Minnesota vs. Colonel H. J. Keeley, et al., decided March 30, 1942, unreported, copy of the opinion attached as an Appendix to this brief.

The State taxing Acts involved in the two decisions are so different in their provisions as to exclude the possibility of drawing a comparison between the applicability of the Federal Act to those two State statutes.

The United States Circuit Court of Appeals has held the Minnesota gasoline tax act to be within the consent of the Hayden-Cartwright Act to the States to tax gasoline sold within a Federal military reservation; the Supreme Court of Wyoming has held that so much of the Wyoming law as levies a tax upon the importation and the use of gasoline, (as distinguished from a sale) within the boundaries of Yellowstone National Park is not within the consent of the Federal Act.

These two holdings are not necessarily in conflict.

We find that in the Minnesota case it was admitted that the action was

> "to recover from said defendants the amount of the tax levied and imposed x x x upon all motor fuel sold by and through the Fort Snelling Post Exchange x x x an dwhich taxes said defendants have collected on that account," etc. (See opinion U. S. District Court, State of Minnesota vs. Ristine, 36 Fed Supp. page 4).

and the decision of the United States Circuit Court of Appeals holds such taxes within the consent of the Act of Congress.

The Wyoming court was dealing with gasoline imported into Yellowstone National Park and not sold, but used by the importer wholly within the boundaries of the National Park. And the latter court held that the Hayden-Cartwright Act was not broad enough to amount to the consent of Congress to relinquish the exclusive Federal jurisdiction within the National Park, in favor of that part of the Wyoming Act taxing gasoline "produced, refined, manufactured, blended, x x x compounded x x x distributed x x x imported into x x x or used" within the boundaries of Yellowstone National Park. (See Wyoming Act, page 19 petitioner's brief).

It is true the reasoning advanced by the two courts in reaching their respective decisions is in conflict.

To me it seems impossible to conform the Hayden-Cartwright Act to the 48 different gasoline taxing laws of the 48 different States, nor do I think we may look further into the record of proceedings of

the Congress than to use that record as a guide in interpreting the language used in the Act, as distinguished from speculation as to what the Congress wanted to accomplish by a particular legislative enactment.

Petioner's remaining specifications of error (IV and V brief p. 11) do not seem to raise such questions as this Court recognizes as grounds for issuance of the writ.

I respectfully contend that the petition here should be denied.

TAYLOR B. WEIR
Attorney for Respondent.
(Address: Helena, Montana.)